

**IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI**

**AN ORDINANCE** repealing sections 5510., 5520., 5547., 5700., 5710., 5711., 5712., 5713., 5714., 5715., 5716., 5720., 5721., 5722., 5723., 5724., 5725., 5726., 5727., 5728., 5729., 5730., 5731., 5732., 5733., 5734., 5740., 5741., 5742., 5743., 5744., 5745., 5746., 5747., 5748., 5800., 5801., 5802., 5803., 5804., 5810., 5811., 5812., 5813., 5814., 5815., 5816., 5817., and 5818., Jackson County Code, 1984, relating to controlled substances, imitation drugs, and drug paraphernalia, and enacting, in lieu thereof, seven new sections relating to the same subject, with a penalty provision.

**ORDINANCE NO. 4961**, March 27, 2017

**INTRODUCED BY** Tony Miller, County Legislator

WHEREAS, recent changes in state law and revised practices within the Jackson County Prosecuting Attorney's Office have made it advisable that certain provisions in the Jackson County Code relating to controlled substances, imitation drugs, and drug paraphernalia be revised; and

WHEREAS, such revisions are in the health, safety, and welfare of the citizens of Jackson County; now therefore,

BE IT ORDAINED by the County Legislature of Jackson County, Missouri, as follows:

Section A. Enacting Clause. Sections 5510., 5520., 5547., 5700., 5710., 5711., 5712., 5713., 5714., 5715., 5716., 5720., 5721., 5722., 5723., 5724., 5725., 5726., 5727., 5728., 5729., 5730., 5731., 5732., 5733., 5734., 5740., 5741., 5742., 5743., 5744., 5745., 5746., 5747., 5748., 5800., 5801., 5802., 5803., 5804., 5810., 5811., 5812., 5813., 5814., 5815., 5816., 5817., and 5818., Jackson County Code, 1984, are hereby

repealed, and seven new sections enacted in lieu thereof, to be known as sections 5510., 5520., 5568., 5569., 5570., 5571., and 5572., to read as follows:

5510. Definitions.

As used in this chapter, the following words and phrases are defined as follows:

Administer means to apply a drug or controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

1. A practitioner (or, in his/her presence, by an authorized agent), or
2. The patient or research subject at the direction and in the presence of the practitioner.

Controlled Substance means drug, substance, or immediate precursor used in schedules I through V of the Uniform Controlled Substances Act chapter 195, RSMo., or chapter 579, RSMo., including, but not limited to:

1. Cocaine and its derivatives;
2. Opiates and opium derivatives such as heroin, codeine, pethidine, and morphine.
3. Hallucinogenic substances including lysergic acid diethylamide, marijuana (Cannabis sativa L.), including seeds of mature plants, mescaline, psilocybin, and various types of methoxyamphetamines;
4. Stimulants such as amphetamines and methamphetamines; and,

5. Barbiturates and other depressants such as amobarbital, secobarbital, pentobarbital, phenobarbital, methaqualone, phencyclidine, and diazepam.

Deliver or delivery means the actual, constructive, or attempted transfer from one person to another of drug paraphernalia or of a controlled substance, or an imitation controlled substance, whether or not there is an agency relationship, and includes sale.

*Director* means the Director of Public Works of Jackson County or the Director's designee.

Dispense means to deliver a drug or controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery.

Distribute means to deliver other than by administering or dispensing a drug or controlled substance.

Drug means:

1. A substance recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States or Official National Formulary, or any supplement to either of them;

2. A substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals;
3. A substance other than food, intended to effect the structure or any function of the bodies of humans or animals; and,
4. A substance intended for use as a component of any chapter specified in this definition. Drug does not include devices or their components, parts, or accessories.

Drug Paraphernalia means all equipment, products, substances, and materials of any kind which are used or intended for use, or designed for the use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance or imitation controlled substance in violation of chapter 195, RSMo. Drug Paraphernalia includes, but is not limited to:

1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances or imitation controlled substances;

3. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance or an imitation controlled substances;
4. Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances or imitation controlled substances;
5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances or imitation controlled substances;
6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, destrose and lactose, used, intended for use, or designed for the use in cutting controlled substances or imitation controlled substances;
7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.
8. Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances or imitation controlled substances;
9. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances or imitation controlled substances;
10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances or imitation controlled substances;

11. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances or imitation controlled substances into the human body;
12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body such as:
- a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - b. Water pipes;
  - c. Carburetion tubes and devices;
  - d. Smoking or carburetion masks;
  - e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
  - f. Miniature cocaine spoons and cocaine vials;
  - g. Chamber pipes;
  - h. Carburetor pipes;
  - i. Electric pipes;
  - j. Air-driven pipes;
  - k. Chillums;
  - l. Bongs; and
  - m. Ice pipes or chillers;

and

13. Substances used, intended for use, or designed for use in the manufacture of a controlled substance.

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;
2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance or imitation controlled substance;
3. The proximity of the object, in time and space, to a direct violation of any provision of this chapter.
4. The proximity of the object to controlled substances or imitation controlled substances;
5. The existence of any residue of controlled substances or imitation controlled substances on the object;
6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to a person whom she/he knows, or should reasonably know, intends to use the object to facilitate a violation of any provision of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of any provision of this chapter shall not prevent a finding that the object is intended for use or designed for use as drug paraphernalia;

7. Instructions, oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale;
11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.
12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
13. The existence and scope of legitimate uses for the object in the community;
14. Expert testimony concerning its use; and
15. The quantity, form, or packaging of the product, substance, or material in relation to the quantity, form, or packaging associated with any legitimate use for the product, substance, or material.

*Emergency* means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

*Emergency Work* means any work performed for the purpose of preventing or alleviating physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.



Imitation drug or imitation controlled substance means a substance that is not a drug or a controlled substance, which by dosage unit appearance (including color, shape, size and markings), or by representation made, would lead a reasonable person to believe that the substance is a drug or a controlled substance. In determining whether the substance is an imitation drug or an imitation controlled substance, the court or authority concerned should consider, in addition to all other logically relevant factors, the following:

1. Whether the substance was approved by the U.S. Food and Drug Administration for over-the-counter (nonprescription or nonlegend) sales and was sold in the U.S. Food and Drug Administration approved package, with the U.S. Food and Drug Administration approved labeling information;
2. Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;
3. Whether the substance is packaged in a manner normally used for illicit controlled substances;
4. Prior convictions, if any, of an owner, or anyone in control of the object, under state or federal law related to controlled substances or fraud;
5. The proximity of the substances to controlled substances;
6. Whether the consideration tendered in exchange for the noncontrolled substance substantially exceeds the reasonable value of the substance considering the actual chemical composition of the substance and, where applicable, the price at which over-the-counter substances of like chemical composition sell. An imitation controlled substance does not include a placebo or registered investigation drug

which was manufactured, distributed, possessed, or delivered in the ordinary course of professional practice or research.

License or licensed means persons required to obtain annual registration as issued by the Missouri State Division of Health as provided by in section 195.030, RSMo.

Manufacture means the production, preparation, propagation, compounding, or processing of drug paraphernalia or of a controlled substance, or an imitation controlled substance either directly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture does not include the preparation or compounding of a controlled substance or an imitation controlled substance by an individual for personal use or the preparation, compounding, packaging, or labeling of a narcotic or dangerous drug:

1. By a practitioner as an incident to administering or dispensing of a controlled substance in the course of his/her professional practice; or
2. By a practitioner or by an authorized agent under his/her supervision for the purpose of, or as an incident to research, teaching, or chemical analysis or by a pharmacist and not for sale.

Marijuana means all parts of the plant genus Cannabis, in any species or form thereof, including, but not limited to Cannabis sativa L., Cannabis indica, Cannabis americana, Cannabis ruderalis, and Cannabis gigantea, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. Marijuana does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.

Narcotic drug means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical analysis:

1. Opium, opiate, and any derivative of opium or opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation. Narcotic drug does not include the isoquinoline alkaloids of opium;
2. Cocaine or any salt, isomer, or salt of isomer thereof;
3. Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof; and
4. Any compound, mixture, or preparation containing any substance referred to in subsections 1 and 2 of this definition.

*Noise Sensitive Area* includes, but is not limited to, a posted area where a school, hospital, nursing home, church, court, public library, or similar institution is located.

*Person* means any individual, government entity, business, trust, estate, firm, association, partnership, joint venture, [or] corporation, or any other legal entity.

*Pharmacist* means a licensed pharmacist as defined by the laws of the State of Missouri, and where the context so requires, the owner of a store or other place of business where controlled substances are compounded or dispensed by a licensed pharmacist. Nothing in this chapter shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege that is not granted by the pharmacy laws of the State of Missouri.

*Practitioner* means a physician, dentist, optometrist, podiatrist, veterinarian, scientific investigator, pharmacy, hospital or other person licensed, registered, or otherwise permitted by the State of Missouri to distribute, dispense, conduct research with respect to, administer, or to use in teaching or chemical analysis, a controlled substance in the course of professional practice and research in the State of Missouri, or a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research.

Production includes the manufacture, planting, cultivation, growing, or harvesting of drug paraphernalia or of a controlled substance or an imitation controlled substance.

Prescription means a written order, and in cases of emergency, a telephone order, issued by a practitioner in good faith in the course of his/her professional practice to a pharmacist for a drug for a particular patient, which specifies the date of its issue, the name and address of the patient (and, if such drug is prescribed for an animal, the species of such animal), the name and quantity of the drug prescribed, the directions for use of such drug, and the signature of such practitioner.

*Public right-of-way* means any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by a government entity.

*Public Space* means any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

*Residential Area* means any real property which contains a structure or building in which one or more persons reside, provided that the structure or building is properly zoned, or is legally nonconforming, for residential use in accordance with the terms and maps of Jackson County's Unified Development Code, chapter 240 of this Code.

*Sheriff* means the Sheriff of Jackson County or the Sheriff's designee.

Warehouseman means a person who, in the usual course of business, stores drugs for others lawfully entitled to possess them and who has no control over the disposition of such drugs except for the purpose of such storage.

Wholesaler means a person who supplies drug paraphernalia, controlled substances, or imitation controlled substances not produced or prepared by that person, on official written orders, but not on prescription.

5520. Penalty, Violation of Petty Offense Code.

Any person who violates the provisions of § 5534.4 of this chapter shall on conviction be [punished] subject to punishment pursuant to section 571.107.2, RSMo. Any person who violates the provisions of section 5567. of this chapter shall on conviction be subject to punishment pursuant to section 5567.2. Any person who violates the provisions of section 5568. of this chapter by possessing not more than ten grams of marijuana or any synthetic cannabinoid shall on conviction be subject to punishment by a fine of not more than five hundred dollars (\$500). Any person who violates any of the remaining provisions of this chapter shall on conviction be [punished] subject to punishment by a fine of not more than one thousand dollars (\$1000) or by imprisonment in the county jail for a term not exceeding one (1) year, or by both.

5547. [Possession or Control of Marijuana.

Except as authorized by law, no person shall possess or have under his control marijuana, which term shall mean all parts of the plant genus Cannabis in any species or form thereof, including, but not limited to Cannabis Sativa L., Cannabis Indica, Cannabis Americana, Cannabis Ruderalis, and Cannabis Gigantea, whether growing or not, the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.]

RESERVED.

5568. Controlled Substances, Prohibited.

No person shall sell, give away, manufacture, use, or possess for any purpose whatever any controlled substance, except as provided in this section.

1. Distribution by licensed practitioners is permitted under the following conditions:
  - a. Practitioners. A licensed practitioner shall be permitted to dispense or distribute controlled substances and drugs to a person in the course of his or her professional practice only, and such licensed practitioner shall not be permitted to possess controlled substances for any other purpose.

- b. Pharmacists. A licensed pharmacist shall be permitted to dispense or distribute controlled substances and drugs to persons under and in pursuance of written prescriptions issued by any licensed practitioner, and such licensed pharmacist shall not be permitted to possess controlled substances for any other purpose.
  - c. Record of distribution. All instances of professional distribution of controlled substances and drugs as provided for herein shall be recorded in suitable form and filed and preserved in a manner so as to be readily accessible for inspection by any law enforcement officer of the county.
2. Any person shall be permitted to possess a controlled substance distributed or dispensed under the provisions of this chapter, but such possession and use must be in accordance with the prescription and prescribed treatment, and any such controlled substance may only be possessed in its original package, as prescribed by a pharmacist.
  3. A person who is a licensed manufacturer, warehouseman, or wholesaler of controlled substances shall be permitted to possess controlled substances for the purpose of wholesale delivery, compounding, preparation, and manufacture only, and the same shall only be resold to other persons permitted by this chapter to resell, or dispense or distribute controlled substances in the course of a licensed manufacturing or wholesale business, a licensed professional practice, or a licensed pharmaceutical business. A licensed manufacturer or wholesaler permitted to possess controlled substances in this subsection (3) may also be a licensed pharmacist and may dispense or distribute narcotic drugs upon written



prescription as provided herein, but shall not consume or permit to be consumed any controlled substances except upon written prescription as herein provided.

4. Any drug, controlled substance, or imitation drug or imitation controlled substance in the possession of any person convicted of a violation of any provision of this chapter, shall be seized by, confiscated by, and forfeited to the Sheriff, who shall make proper disposition thereof.
5. This section shall not apply to the administering, distributing, or dispensing of any medicinal preparation that contains in one fluid ounce, or in a solid or semi-solid preparation administered, distributed, or dispensed, some drug or drugs of medicinal qualities in addition to those possessed by the controlled substances alone. Such preparation shall be administered, distributed, or dispensed in good faith and not for the purpose of evading this section. However, no person shall administer, dispense, or sell, under the exemption of this section, any preparation included in this subsection, when he/she knows, or can by reasonable diligence ascertain, that such administering, dispensing, or selling, will provide the person to whom or for whose use such preparation is administered, dispensed, or sold, within any forty-eight (48) consecutive hours, with more than four (4) grains of codeine or any of its salts.
6. The provisions of this section restricting the possession and control of controlled substances shall not apply to common carriers or warehousemen engaged in lawfully transporting or storing such controlled substances, or to any employee of such common carriers or warehousemen, or to public officers or employees in

the performance of official duties requiring possession or controlled substances,  
or to persons aiding such officers or employees in performance of such duties.

5569. Drug Paraphernalia, Possession Prohibited.

No person shall use or possess drug paraphernalia as defined in this chapter.

5570. Drug Paraphernalia, Manufacture or Delivery Prohibited.

No person shall deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia as defined in this chapter, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or imitation controlled substance.

5571. Drug Paraphernalia, Delivery to a Minor, Prohibited.

No person 18 years of age or over shall deliver drug paraphernalia, as defined in this chapter, to a person under 18 years of age.

5572. Imitation Drug or Imitation Controlled Substance, Delivery to Any Person, Prohibited.

No person shall deliver any imitation drug or imitation controlled substance to another person.

[5700. Scope.

The provisions of this chapter shall apply to the unincorporated area of Jackson County.]

[5710. Definitions.

The following are general definitions to be referred to in the construction of this chapter.]

[5711. Controlled Substance.

Controlled substance means any drug or substance included in Schedule I through V of the Uniform Controlled Substances Act found in Chapter 195 of the Revised Statutes of Missouri, including, but not limited to the following:

a. Cocaine.

Cocaine and its derivatives.

b. Opiates.

Opiates and opium derivatives such as heroin, codeine, pethidine and morphine.

c. Hallucinogenic Substances.

Hallucinogenic substances including lysergic acid diethylamide, marijuana (cannabis sativa L), including seeds of mature plants, mescaline, psilocybin, and various types of methoxyamphetamines.

d. Stimulants.

Stimulants such as amphetamines and methamphetamines.

e. Barbituates.

Barbituates and other depressants such as amobarbital, secobarbital, pentobarbital, phenobarbital, methoqualone, phencyclidine, and diazepam.]

[5712. Deliver or Delivery.

Deliver or delivery means the actual, constructive or attempted transfer from one person to another of a controlled substance or drug paraphernalia.]

[5713. Drug.

Drug means:

a. Officially Recognized Drugs.

Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them; or

b. Used in Diagnosis and Treatment.

Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animal;

c. Component Part.

Substances intended for use as a component of any chapter specified in this definition.]

[5714. Drug Paraphernalia.

As used in this chapter unless the context otherwise requires, drug paraphernalia shall mean all equipment, products, and materials of any kind which are used, intended for

use, or designed for use, in manufacturing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter of the Missouri Uniform Controlled Substances Act, as set forth in Chapter 195, RSMo. Drug paraphernalia shall include, but not be limited to the following.

a) Diluents and Adulterants.

Drug paraphernalia shall include diluents and adulterants such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.

b) Separation Gins and Sifters.

Drug paraphernalis shall include separation gins and sifters used, in intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

c) Hypodermic Syringes.

Drug paraphernalia shall include hypodermic syringes, needles, and other objects used, intended for use, and designed for use in parenterally injecting controlled substances into the human body.

d) Other Objects.

Drug paraphernalis shall include objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil in the human body, which shall include but not be limited to the following:

- a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- b. Water pipes;
- c. Carburetion tubes and devices;
- d. Smoking and carburetion masks;
- e. Roach clips, meaning objects used to hold burning material such as marijuana cigarette, which has become too small or too short to hold in the hands;
- f. Miniature cocaine spoons and cocaine vials;
- g. Chamber pipes;
- h. Carburetor pipes;
- i. Electric pipes;
- j. Air-driven pipes;
- k. Chillums;
- l. Bongs; and
- m. Ice pipes or chillers.]

**[5715. Manufacture of Controlled Substances.**

Manufacture means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

a) Exceptions.

Manufacture does not include the following:

a. Individual Use.

The preparation or compounding of a controlled substance by an individual for his own use, or

b. Professional Practice.

The preparation, compounding, packaging or labeling of a controlled substance by a practitioner of his agent pursuant to a lawful order of a practitioner as an incident to his administering or dispensing of a controlled substance in the course of a professional practice,

c. Research and Dispensing.

The preparation, compounding, packaging or labeling of a controlled substance by a practitioner or by his authorized agent under his supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or hospital as an incident to his or its dispensing of a controlled substance.]

[5716. Practitioner.

Practitioner means a physician (M.D. or O.D.), dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise authorized by law to administer and prescribe, to use in teaching or chemical analysis, or to conduct research with respect to a controlled substance in the course of professional practice and research.]

**[5720. Drug Paraphernalia Determination, Factors Considered.**

In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following.]

**[5721. Statements.**

Statements by an owner or by anyone in control of the object concerning its use shall be considered.]

**[5722. Prior Convictions.**

Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance shall be considered.]

**[5723. Proximity to Violation.**

The proximity of the object, in time and space, to a direct violation of this chapter shall be considered.]

**[5724. Proximity to Controlled Substance.**

The proximity of the object to any controlled substance shall be considered.]

**[5725. Residue.**

The existence of any residue of a controlled substance on the object shall be considered.]



**[5726. Intent to Deliver.**

Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to and person whom he knows, or should reasonably know, intends to use the object to facilitate a violation of this chapter shall be considered. The innocence of an owner or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia.]

**[5727. Instructions.**

Instructions, oral or written, provided with the object concerning its use shall be considered.]

**[5728. Descriptive Materials.**

Descriptive materials accompanying the object which explain or depict its use shall be considered.]

**[5729. Advertising.**

National and local advertising concerning the use of the object shall be considered.]

**[5730. Display.**

The manner in which the object is displayed for sale shall be considered.]

[5731. Legitimate Supplier.

Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products shall be considered.]

5732. Ratio of Sales.

Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise shall be considered.]

[5733. Legitimate Use.

The existence and scope of any legitimate use for the object in the community shall be considered.]

[5734. Expert Testimony.

Expert testimony concerning its use shall be considered.]

[5740. Use or Possession of Drug Paraphernalia Prohibited.

It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to manufacture, inject, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.]

**[5741. Penalty, Use or Possession of Drug Paraphernalia.**

Any person who violates Section 5740.00 shall be guilty of a misdemeanor, and on conviction may be imprisoned for not more than one (1) year in the county jail or fined not more than one thousand dollars (\$1,000), or both.]

**[5742. Delivery or Manufacture of Drug Paraphernalia Prohibited.**

It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to manufacture, inject, ingest, inhale, or otherwise be used to introduce into the human body a controlled substance in violation of this chapter.]

**[5743. Penalty, Delivery or Manufacture of Drug Paraphernalia.**

Any person who violates Section 5742.00 shall be guilty of a misdemeanor and on conviction may be imprisoned for not more than one (1) year in the county jail, or fined not more than one thousand dollars (\$1,000), or both.]

**[5744. Delivery of Drug Paraphernalia to Minor.**

Any person eighteen (18) years of age or older who violates Section 5742.00 by delivering drug paraphernalia to a person under eighteen (18) years of age who is at least three (3) years his junior shall be guilty of a separate misdemeanor.]

**[5745. Penalty, Delivery of Drug Paraphernalia to Minor.**

Any person who violates Section 5744.00 shall be guilty of a separate misdemeanor, and on conviction may be imprisoned for not more than one (1) year in the county jail, or fined not more than one thousand dollars (\$1,000), or both.]

**[5746. Advertisement of Drug Paraphernalia Prohibited.**

It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.]

**[5747. Penalty, Advertisement of Drug Paraphernalia.**

Any person who violates Section 5746.00 shall be guilty of a misdemeanor, and on conviction may be imprisoned for not more than one (1) year in the county jail, or fined not more than one thousand dollars (\$1,000), or both.]

**[5748. Forfeiture and Disposition of Drug Paraphernalia.**

That in the event any drug paraphernalia as described in Sections 5714.00 through 4714.04 has come into the custody of a peace officer in violation of the provisions of this chapter, then such paraphernalia shall be forfeited and disposed of as provided for in Section 195.140, RSMo., which provides for the forfeiture and disposal of controlled substances and certain devices or material in connection therewith.]

[5800. Definitions.

The following words and phrases are defined as follows.]

[5801. Controlled Substance.

Controlled substance means a substance defined in Schedules I through V of the Missouri Uniform Controlled Substance Act as contained in Chapter 195, RSMo.]

[5802. Distribute.

Distribute means the actual, constructive, or attempted transfer, delivery, or dispensing to another of an imitation controlled substance.]

[5803. Imitation Controlled Substance.

Imitation controlled substance means a substance that is not a controlled substance, which by dosage unit appearance (including color, shape, size and marking), or by representations made, would lead a reasonable person to believe that the substance is a controlled substance.

a) Considerations.

In those rare cases when the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance" (for example in the case of powder or liquid), the court or authority concerned should consider, in addition to all other logically relevant factors, the following factors as related to "representations made" in determining whether the

substance is an "imitation controlled substance."

b) Statements by Owner.

Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance or its use or effect should be considered.

c) Statements to Recipient.

Statements made to the recipient that the substance may be resold for inordinate profit should be considered.

d) Packaging.

Whether the substance is packaged in a manner normally used for illicit controlled substances should be considered.

e) Evasive Tactics.

Evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities should be considered.

f) Prior Convictions.

Prior convictions, if any, of the owner, or anyone in control of the object, under state or federal law related to controlled substances or fraud should be considered.

g) Proximity to Controlled Substances.

The proximity of the substances to controlled substances should be considered.]

[5804. Manufacture.

Manufacture means the production, preparation, compounding, processing,

encapsulating, packaging or repackaging, labeling or relabeling, of an imitation controlled substance.]

**[5810. Manufacture or Distribution of Imitation Drugs Prohibited.**

It is unlawful for any person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance.]

**[5811. Penalty, Manufacture or Distribution of Imitation Controlled Substances.**

Any person who violates Section 5810.00 shall be guilty of a misdemeanor and on conviction may be imprisoned for not more than one (1) year in the county jail, or fined not more than one thousand dollars (\$1,000), or both.]

**[5812. Distribution to Minor Prohibited.**

Any person eighteen (18) years of age or over who violates Section 5810.00 by distributing an imitation controlled substance to a person under eighteen (18) years of age is guilty of a misdemeanor.]

**[5813. Penalty, Distribution of Imitation Controlled Substances to a Minor.**

Any person who violates Section 5812.00 shall be guilty of a misdemeanor and on conviction may be imprisoned for not more than one (1) year in the county jail, or fined not more than one thousand dollars (\$1,000), or both.]

**[5814. Use or Possession of Imitation Drugs Prohibited.**

It is unlawful for any person to use, or to possess with intent to use, an imitation controlled substance.]

**[5815. Penalty, Use or Possession of Imitation Controlled Substances.**

Any person who violates Section 5814.00 is guilty of a misdemeanor and on conviction may be imprisoned for not more than one (1) year in the county jail, or fined not more than one thousand dollars (\$1,000), or both.]

**[5816. Advertising of Imitation Drugs Prohibited.**

It is unlawful for any person to place in any newspaper, magazine, handbill or other publication, or to post or distribute in any public place, any advertisement or solicitation with reasonable knowledge that the purpose of the advertisement or solicitation is to promote the distribution of imitation controlled substances.]

**[5817. Penalty, Advertising Imitation Drugs.**

Any person who violates Section 5817.00 is guilty of a misdemeanor and on conviction may be imprisoned for not more than one (1) year in the county jail, or fined not more than one thousand dollars (\$1,000), or both.]

**[5818. Forfeiture of Imitation Drugs.**

In the event any simulated controlled substance or drug as described in Section 5803.00 has come into the custody of a peace officer in violation of the provisions of this




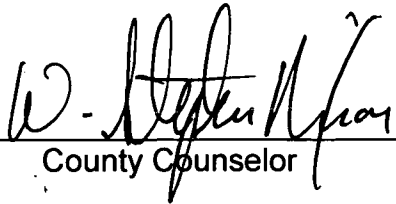
chapter, then that substance or drug shall be forfeited and disposed of as provided in Section 195.140, RSMo, which provides for the forfeiture and disposal of controlled substances and certain devices or material in connection therewith.]

Section B. Penalty Provision. Any violation of any of the provisions of this Ordinance shall, upon conviction, be subject to punishment pursuant to section 5520. of this Ordinance.

Effective Date: This Ordinance shall be effective immediately upon its passage by the County Executive.

APPROVED AS TO FORM:

  
Chief Deputy County Counselor

  
County Counselor

I hereby certify that the attached ordinance, Ordinance No. 4961 introduced on March 27, 2017, was duly passed on April 10, \_\_\_\_\_, 2017 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 9

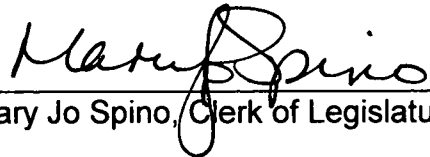
Nays 0

Abstaining 0

Absent 0

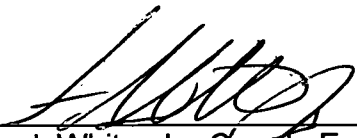
This Ordinance is hereby transmitted to the County Executive for his signature.

4-10-17  
Date

  
Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance No. 4961.

4/13/17  
Date

  
Frank White, Jr., County Executive